

**Testimony of
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Ohio Valley Resources, Inc.
The American Coal Company**

Before the

**House Subcommittee on National Economic Growth
Natural Resources and Regulatory Affairs
Committee on Government Reform and Oversight**

June 24, 1998

Mr. Chairman and members of the Subcommittee, my name is Robert E. Murray. I am President and Chief Executive Officer of Coal Resources, Inc. ("Coal Resources"), Ohio Valley Resources, Inc. ("Ohio Valley") and The American Coal Company ("**AmCoal**"). Ohio Valley produces 5.3 million tons of coal per year from the Powhatan No. 6 Mine in Ohio, and 3.0 million tons per year from the Maple Creek Mine in Pennsylvania. Coal Resources produces 2.6 million tons per year from mines in Pennsylvania and Western Kentucky. Just this week AmCoal completed the acquisition of the Galatia Mine in Southern Illinois, where production next year will be in excess of 7.0 million tons. Another pending acquisition will add an additional 2.0 million tons of production later this month.

Combined, these mines employ 2,100 hard working people, who simply want to earn a living for their families and themselves with honor and dignity. Studies by The Pennsylvania State University show that up to 10 additional jobs are created in our communities to provide the goods and services used by our employees. Thus, our Mines account for up to 23,100 jobs in America.

It is an extreme honor and pleasure, Mr. Chairman, for me to express our strong opposition to the Kyoto Protocol on Climate Change before this Subcommittee. The Kyoto Protocol, beyond any question, will eliminate these jobs and the jobs of tens of thousands of other coal miners. Further, it will destroy the lives of these people, who only want to earn a living and contribute to our economy and Nation, as well as those of their families. While the subject of so-called global warming or the Kyoto Protocol may be an environmental or political issue, to me, Mr. Chairman, it is a human issue. You see, I know the names of hundreds of the individuals whose lives and families will be destroyed as a result of the global warming hoax and Kyoto Protocol perpetuated by some radical, environmentalists and politicians.

But, these losses are only the beginning. The basis for a strong economy and our position in the world market is low cost energy, which has been made possible by the most productive coal industries in the world. Millions of jobs will be lost in America with the elimination of low cost energy, due to the Kyoto Protocol. No less than the economic future of our Nation is at stake.

Mr. Chairman, my testimony before this Committee will focus on three major areas:

- 1) The impacts of the Kyoto Protocol on the coal industry and what this implies for our economy in general:
- 2) The outcome of the recent Bonn negotiations on the Protocol “details”;
- 3) The attempts of the Environmental Protection Agency (EPA) and other Government agencies to implement the restrictions that would be required by the Protocol – even before the Senate has considered, much less ratified, this agreement, as well as the ways that Congress can prevent this through the appropriations process.

Mr. Chairman, we can never forget that, behind all the international rhetoric, behind all the Administration’s posturing and so-called analysis are the faces of real people who serve our Nation in the coal mines and in our factories and who will lose their jobs and harm those they support if this agreement ever becomes the law of the Land, either directly, through ratification of the Protocol or indirectly, through the actions of the Administration generally and the EPA specifically. What an outrage that the Administration and EPA want to destroy the lives of so many hard working Americans, but have not demanded similar commitments and sacrifices from citizens of other countries.

THE REQUIREMENTS OF THE KYOTO PROTOCOL AND ECONOMIC IMPACTS

A. The Kyoto Requirements

In December 1997, representatives of the United States, along with those of 160 other nations, agreed on the basic terms of the Kyoto Protocol on Climate Change. This agreement requires the 38 developed countries of the world – the members of the European Union and other European countries (East and West), Russia, Canada, Japan, Australia, New Zealand, and the United States – to reduce emissions of greenhouse gases by an average of 5.2 percent below 1990 levels by 2008-2012, with additional, but as yet unspecified, reductions after 2012. Although negotiated by all members of the United Nations, the protocol is not global, as it excludes the source of

the United Nations, the protocol is not global, as it excludes the source of greatest source of emissions growth in the future, the more than 130 countries that are members of the “developing world.”

The United States would have to reduce emissions of greenhouse gases by 7 percent below 1990 levels under the terms of the Protocol. This is not a 7 percent reduction however. It is on the order of a 40 percent decline from . emission levels that would occur in 2010 under a “business as usual” forecast. As pointed out in the statement filed today by Mr. Chris Farrand, Peabody Group, the United States could eliminate the equivalent of the all the output of the electricity sector and still not reach the targets of Kyoto.’ This is truly a formidable task, and one that cannot be accomplished in just a ten-year period of time without a high cost to our economy and to our workforce.

B. The Overall Economic Effects

Several noted economists have studied the Protocol and the implications that such a significant reduction in emissions would have on our economy. All have come to the same conclusion: meeting the terms of the Protocol would be impossible without sharp increases in energy costs, loss of jobs, an erosion of global competitiveness and significant changes in the standard- of living of our citizens. Energy prices, energy use and economic potential are, and will remain, tied. Thus, an increase in energy prices forcing a reduction in energy use will mean a decline in economic growth. I will cite the findings of just two of these many studies, **“Global Warming: The High Cost of the Kyoto Protocol,”** completed in June by WEFA, Inc. and **“The Kyoto Protocol: A Flawed Treaty Impacts America,”** completed in May by CONSAD Research Corporation. Both of these studies can be made available to the committee.

CONSAD found that:

- Permit prices of between \$140 to \$265 per ton of carbon will be required to reduce emission to 7 percent below 1990 levels by the Protocol’s target dates in **2008-2012;**
- These permit prices will mean that consumers and businesses will be forced to pay higher energy costs which in turn will drive up prices on all consumer goods;
- Approximately 3.1 million fewer American workers will be employed in the year 2010 as a result of the Protocol;

¹ Testimony of Mr. Chris Farrand, Peabody Group, House Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, June 24, 1998, pages 11, 12.

- US Gross Domestic Product (GDP) will decline by at least \$177 billion and perhaps by as much as \$318 billion in 2012, the last year of the Protocol's first budget period.

WEFA's conclusions are similar:

- Permit prices of \$265 per ton of carbon would be required to achieve the Kyoto target. These prices would raise to \$310 per ton in 2015 and \$360 per ton in 2020 to maintain that lower level of emissions;
- Energy and electricity prices would nearly double, and U.S. competitiveness would be seriously impaired;
- Approximately 2.4 million jobs would be lost;
- U.S. Gross Domestic Product would decline by \$300 billion annually by 2010, 3.2 percent below base line projections.

What about the effects on individual families?

WEFA found that:

- Prices of home heating oil would increase, on average, by 73 percent; natural gas prices would be up by 65 percent; electricity by 56 percent; and the price of gasoline would rise by at least 60 cents per gallon;
- The protocol would cost the average household in the United States over \$2,700 annually by 2010, a cost that our lower income people can ill-afford;
- Impacts on businesses and industry would be as great or higher: distillate fuel oil would cost 98 percent more; natural gas 76 percent more and electricity costs would be 60 percent higher.

As **CONSAD** said, the U.S. standard of living will decrease as working families are forced to reduce consumption of goods and services in every major category, including food, energy and health care. Needless to say, those that become unemployed will experience even greater harm.

Both WEFA and **CONSAD** conclude that every state and every industry would feel the effects of Kyoto, although some regions and some industries would be more impacted than others. In the manufacturing sector, energy intensive industries such as chemical, paper and primary metals would be especially hard hit, but there are no "winners". All industry sectors would experience loss in employment and output. Even the computer and electric products industries would be see a decline in output due to an increase in imports from countries that have no emissions reduction requirements.

The greatest absolute employment losses would occur in the industrialized Midwest and in the South Atlantic states, according to CONSAD.² But, as a single industry and as a percentage of the total employment, no industry would suffer more than the coal industry and no states more than the major centers of coal production in West Virginia, Ohio, Pennsylvania, Wyoming, Kentucky, Alabama, Illinois, Indiana and Montana.

C. Effects on the Coal Industry

According to WEFA, "Proposed global warming policies would have a profound impact on energy prices and markets." WEFA goes on to conclude that:

"Under the Kyoto Protocol, delivered coal prices would rise dramatically. To meet the Kyoto target, minemouth prices and rail rates would decline along with demand. Consequently, revenues for coal producers will be reduced. To the extent possible, coal companies would lower their production costs by reducing labor or investment in productivity. For those workers that remain employed, wages and benefits would be lower. Even so, coal consumption would decline sharply as electric utilities switch to fossil fuels with lower emissions, such as natural gas, and electric energy sales decline from baseline levels due to higher prices. Under the Kyoto Protocol, coal consumption would be phased out over the period 2010 to 2020. The result would be massive dislocations in coal producing areas, and extraordinary losses for railroads."³

The graph on the next page illustrates this statement:

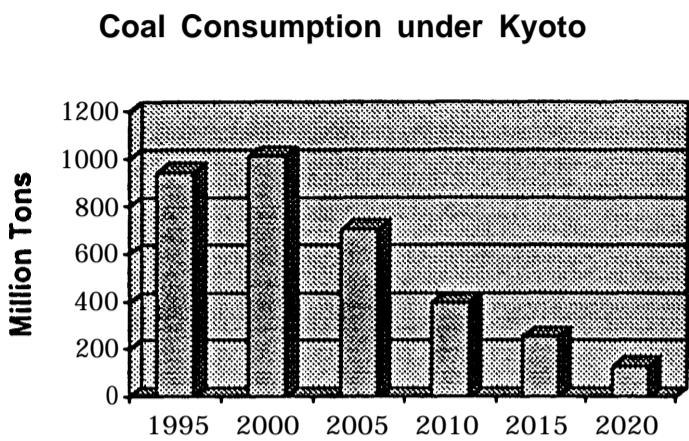
I hope this is an extreme case. But, even if the decline in coal consumption in the United States were to be half that forecast by WEFA, it is clear that the coal industry and our employees would be seriously impacted. Coal miners would lose jobs in far greater numbers than occurred as a result of the Clean Air Act Amendments of 1990. Job losses would be throughout the industry in all coal producing states ⁴ and not in selected regions, as was

² 'The Kyoto Protocol, A Flawed Treaty Impacts America: Sectoral and Regional Economic Impact Analysis' CONSAD Research Corporation, (1998), page 6, 10-13.

³ 'Global Warming: The High Cost of the Kyoto Protocol, National and State Impacts' WEFA, Inc., (1998), page 23

⁴ After the Clean Air Act Amendments of 1990 were passed the coal industry underwent significant changes. Although coal production has increased from 1.029 billion tons in 1990 to 1.088 million tons in 1997, production shifted from the higher sulfur coalfields of Indiana, Illinois, West Kentucky, Northern West Virginia and Ohio to lower sulfur coalfields in Wyoming and Montana. Production in the

the case after 1990. In my own state of Ohio almost **all our** 3,500 miners coal miners would be unemployed by 2010. This is in addition to the approximately 20,000 direct coal mining jobs already lost under the Clean **Air** Act.



Source: *Global Warming: The High Cost of Kyoto Protocol*, WEFA, 1998

The effects of this forced decline in coal use will extend far beyond the industry itself because coal is the basis for over 56 percent of all electricity generated today. This low cost electricity is the basis for our current sound economy and removing this resource from our generation base will have effects that are felt throughout the Nation in terms of lower economic potential, higher prices, diminished ability to compete in world markets and overall employment losses.

SINCE KYOTO: THE CURRENT STATUS OF “DETAIL NEGOTIATIONS”

In December 1997, the Administration claimed a ‘victory’ in the Kyoto Protocol as it includes a number of “flexibility” provisions that could, if structured correctly, lower the overall costs of compliance with the terms of the agreement. These provisions include an international emissions trading system to be implemented between developed countries only and a Clean Development Mechanism (CDM) that would allow developed countries such as the United States to take advantage of lower cost reductions in the

first group of states was 258.2 million tons in 1990 but only 189.2 million tons in 1997, a drop of 26 percent. Production in Wyoming and Montana was 221.6 million tons in 1990 and 322.7 million tons in 1997. Employment in the higher sulfur coalfields declined 45percent from 35,720 in 1990 to approximately 19,500 miners in 1997. Although part of the decline was due to productivity increases, most of the drop in workforce can be attributed to losses in coal markets due to switch from high sulfur to low sulfur coal. Under the terms of the Kyoto Protocol, demand for coal will decline and coal production will go down in all states.

developing countries. The details of these flexibility provisions were left to be negotiated at a later date.

That the United States is dependent upon these flexibility programs became very evident in March and April of this year when Dr. Janet Yellen, chairman of the President's Council of Economic Advisors, testified before several committees of the Congress. She said that the costs of meeting Kyoto would be only in the range of \$14 to \$23 per ton of carbon and would cost the average household only \$70 to \$110 per year. Although the details of this analysis are just now forthcoming, Dr. David Montgomery⁵ has concluded that these low cost estimates are based on at least two major assumptions: (1) that the US would use the trading system to purchase, from other countries, between 82 and 85 percent of the credits required to meet the Protocol obligations, and (2) that the major developing countries would participate in the trading system by 2010.

Neither assumption is realistic either by the 2008-2012 initial budget period or beyond..

The Kyoto Protocol left out many of the details that are required to actually implement the terms of the deal. Emissions trading is just a concept, and one that is not universally accepted. The developing countries, including the most developed countries such as China, S. Korea, India, Mexico and Brazil have no obligations under the Protocol. The Administration has expressed hope that international negotiations now ongoing would solve these problems. There is a long way to go, however, and neither emissions trading or widespread developing country participation can be counted on to be available and to reduce the 2008-2012 compliance costs of Kyoto.

The negotiators met in Bonn, Germany during the first two weeks of this month to begin to hammer out the Kyoto details. The meetings closed on June 12 with countries even further apart than when they left Kyoto last December. In fact, it was apparent that many countries still do not have a firm grasp of the agreement or its effects on their own economies. Kyoto is a bad deal for America, and it is also a bad deal for many other countries – a fact that is just now beginning to come to light.

The United States had hoped to make progress on two fronts during the Bonn meeting: (1) a greater acceptance of international emissions trading and the other flexibility mechanisms included in the Protocol, along with a firm schedule to develop the rules under which these systems would

⁵ 'How Much Could Kyoto Really Cost? A Reconstruction and Reconciliation of Administration Estimates,' Bernstein and Montgomery, Charles Rivers Associates, Washington DC, (1998)

operate, as well as (2) advancement of the idea of future participation of developing countries.

As pointed out, the Administration is assuming that the United States can **comply with the terms of the Protocol** at a more reasonable cost by obtaining most (82-85 percent) of the credits needed from abroad. In Bonn the US, with the support of Canada, Russia, Japan, New Zealand, **Norway** and **Iceland**, voiced its views that there should be NO limit on the number of “offshore” credits a country can purchase or no limits on trading.

This idea is not accepted by any other country, The European Union said **that reductions must begin** at home and that no more than a small number of credits (they implied 50 percent of a country's total obligation) should be met through international emissions trading or credits generated through the CDM. The developing countries supported the European Union and insisted that domestic actions predominate. The environmental community stated that the cap on use of emissions trading should be even lower than 50 percent.

To go further, the developing world has yet to fully accept the concepts of trading and, as a result, the only agreement reached in Bonn was to list items that might be discussed when considering rules for emissions trading or other flexibility concepts. There is no agreement on what the list should actually be and certainly no schedule for discussing rules. This negotiation is likely to continue well into the next century.

There was even less progress on attempts to bring in the most advanced countries of the developing world. In Kyoto, these countries refused to consider even voluntary ascension to the terms of the Protocol. In Bonn, this refusal was even more adamant; and, indeed, in a closing statement, the Ambassador of Indonesia speaking on behalf of the entire developing country group said: “The Group reiterates that there must be no new commitments, voluntary or otherwise, introduced for all developing countries, under any guise..”⁶.

Although the negotiations are not “deadlocked” per se, it is clear that conclusion of the rules necessary to implement the agreement are a long way from completion. Given the requirements of Senate Resolution 98 or the **Byrd-Hagel** resolution, that, to be ratified by the Senate, any agreement must include developing country participation and must not harm the

⁶ Closing Statement by his Excellency Ambassador Izhar Ibrahim of the Republic of Indonesia on behalf of the Group of 77 and China before the meetings of the Subsidiary Bodies of the United Nations Framework Convention on Climate Change, Bonn, June' 12, 1998

economy of the United States, it is difficult to see how the President can sign the Protocol let alone send it to the Senate for its advice and consent.

It is our hope that the Senate never ratifies Kyoto as it would harm our economy and so many Americans with absolutely no long-term benefits.

CONTROLS THROUGH THE CLEAN AIR ACT “BACK DOOR”

There is absolutely no question in my mind, or in the collective opinion of the domestic mining industry, that EPA intends to implement through whatever means necessary the goals of the Kyoto Protocol. It is becoming increasingly clear that EPA and others in the Administration are attempting to rely on domestic authorities, i.e., the Clean Air Act, to meet the goal of a 7 percent reduction in greenhouse gas emissions from **1990** levels by the first budget period of 2008-2012 (which actually equates to approximately a 40 percent reduction from anticipated emissions). Because the utility sector accounts for about 37 percent of total United States' CO₂ emissions, and coal-fired units in turn account for 82 percent of electricity sector emissions, Resources Data International (RDI) has estimated that well over a third of current US coal-fired generation may need to be eliminated to meet the Kyoto target.⁷ Accordingly, it is not surprising that an extraordinarily large amount of time currently is being devoted by EPA to scrutinize coal-fired utility emissions of not only CO₂, but of sulfur dioxide (SO₂), nitrogen oxides (NO_x) and especially mercury.

In this section, I will lay out the mining industry's general view that EPA is attempting, transparently and unjustifiably, to implement the Kyoto Protocol through the Clean Air Act “back door.” This includes: (1) a review of the errors and discrepancies in the EPA policy and legal document on the authority to regulate CO₂ (an April 10, 1998 analysis by the agency's General Counsel); (2) a proposed settlement agreement between EPA and the environmental community that is indicative of the agency's intent to twist the judicial process to achieve policy objectives that otherwise could not be accomplished through public fora and under congressional scrutiny; and (3) several examples of specific statements by senior EPA personnel that support the “back door” concept.

A. The Clean Air Act Does Not Provide Authority to Regulate CO₂

The question of EPA's authority to regulate CO₂ under the Clean Air Act arose during a March 11, **1998** hearing before the House Appropriations

⁷ “At What Cost? Federal Environmental Regulations in a Competitive Electricity Marketplace: The Cumulative Impacts of Federal Environmental Activism on the Electricity Supply,” Resource Data International, Inc. (1998), pp. 4-5.

Committee, wherein Administrator Carol Browner agreed to provide a legal opinion on this matter, and the result was an April 10 memorandum prepared by EPA General Counsel Jon Cannon. This memorandum concludes that CO₂, like SO₂, NO, and mercury, is an “air pollutant” under §302(g). It then notes, however, that “[s]uch a general statement of authority is distinct from an EPA determination that a particular air pollutant meets the specific criteria for EPA action under a particular provision of the Act. A number of specific provisions of the Act are *potentially* applicable to these pollutants emitted from electric power generation.”⁸

Mr. Cannon lists many programs under the Act, several of which the mining industry believes may be used to set “specific criteria” for regulatory action consistent with the meaning of his memorandum, including § 109 establishing criteria pollutants (including SO₂ and ozone, of which NO, is a precursor pollutant); §110 requiring states to revise their emission reduction plans to conform with EPA’s regulations; § 111 establishing new source performance standards (NSPS) for major sources (including new NSPS for utilities that EPA intends to promulgate later this year); and the § 112 hazardous air pollutant (HAP) program (under which EPA prepared its mercury and utility HAP Reports to Congress, and likely will propose later this year potential new mercury controls). He then notes summarily that “[w]hile CO₂, as an air pollutant, is within EPA’s scope of authority to regulate, the Administrator has not yet determined that CO₂ meets the criteria for regulation under one or more provisions of the Act. ***Specific regulatory criteria under various provisions of the Act could be met if the Administrator determined under one or more of those provisions that CO₂ emissions are reasonably anticipated to cause or contribute to adverse effects on public health, welfare, or the environment.***” *Id.* at 4-5.

When carefully parsing through the wording of this statement, and at the same time taking into consideration ongoing EPA regulatory efforts relative to SO₂, NO, and mercury, as well as ongoing research and legal initiatives that include CO₂, one conclusion resonates clearly: whether or not EPA has “publicly” stated that authority exists under the Clean Air Act to regulate CO₂ is immaterial; if such a decision has been, or shortly will be made that CO₂ emissions “are reasonably anticipated to cause” adverse effects, the agency already has, and not coincidentally, prepared the groundwork for implementing CO₂ emission reductions under several Clean Air Act programs. For the record, the mining industry believes that decision already has been made by EPA in the affirmative, at least privately, hence the issue of

⁸ “EPA’s Authority to Regulate Pollutants Emitted by Electric Power Generation Sources,. April 10, 1998 memorandum Jonathan Z. Cannon to Carol M. Browner, at p. 3 (emphasis added).

whether Administrator Browner has made some official, public pronouncement is a red herring.

Setting aside the policy implications of this situation, regulation of CO₂ under the Clean Air Act would be inconsistent with the repeated indications in the Act that Congress wanted further research completed so that Congress (not EPA) could address the nature and scope of any CO₂ regulation.

In this regard, the basic Clean Air Act regulatory programs focus on regulation of “ambient” or ground level, air quality. When Congress wanted to reach beyond the ambient air to address air pollution concerns not traditionally subject to the Act – such as the effect of substances in the stratosphere or troposphere – it created new authority. For example, Congress added a “stratospheric ozone protection” title to the Clean Air Act in 1990 in response to another international protocol (the Montreal Protocol). And while Congress told EPA in §602 of this new Title VI to develop information on the global warming potential of substances that are present in the stratosphere, it also said that this provision “shall not be construed to be the basis of any additional regulation under this Act.” Thus Congress made clear it was not about to authorize a global warming or climate change program under the Clean Air Act.

Moreover, Congress, in the only specific reference to CO₂ in the Act, directed EPA under § 103(g) to study “nonregulatory strategies and technologies” for preventing or reducing CO₂ and other substances; Congress did not create any new regulatory authority for a Clean Air Act global warming program directed at CO₂. In short, because the only references to CO₂ in the Act are to nonregulatory strategies, and because Congress made clear that the new Clean Air Act program implementing the Montreal Protocol does not provide regulatory authority to address global warming, Congress did not intend for EPA to regulate CO₂ under the Act. Rather, Congress reserved the decision on the scope and nature of any global warming regulatory program to itself, through consideration of further legislation.

B. The NRDC/EPA Settlement Agreement is an Improper Attempt by EPA to Bind Itself to Obligations and Deadlines that do not Appear in the Act

On June 2, EPA published in the *Federal Register* notice of a proposed settlement agreement with the Natural Resources Defense Council (NRDC), *NRDC v. EPA, No. 92- 1415 (DC Cir.)*, that the mining industry believes is “inappropriate, improper, inadequate, [and] inconsistent” with the requirements of §113 of the Clean Air Act, i.e., that part of the Act under which the agency is required to allow the public to review and comment on the terms of proposed settlement and comparable legal agreements. While

the mining industry intends to file comments opposing this proposed agreement, and while such proceedings in the context of ongoing judicial actions **normally** are outside the scope of congressional scrutiny, the substance of the EPA/NRDC agreement is squarely on point with the theme of climate change implementation through the Clean Air Act Aback door.” As such, this and any future effort by EPA to potentially circumvent congressional oversight of the climate change issue through the use of judicial processes must be forced to withstand public scrutiny, must be explained by EPA **prior** to finalizing any such agreements, and, where warranted, must be denounced thoroughly.

The alternative is to leave EPA unencumbered to potentially develop and implement policy and regulatory initiatives through a succession of “sweetheart deals” made under the terms of similar settlement agreements. While EPA’s historical propensity to swiftly enter into settlement negotiations **in** cases where an environmental or public interest group merely filed a deadline action (i.e., where the scope of the lawsuit is supposed to be limited to whether EPA missed a statutory deadline and a determination of an appropriate schedule for meeting such deadline) is well known, what is disturbing is the trend toward settlements replete with substantive, if not regulatory obligations. Adding insult to injury, after “losing” these deadline suits EPA readily pays out exorbitant attorneys fees, thereby feeding this cyclical series of events in perpetuity.

The **NRDC** action is six years old, and while the initial settlement agreement and several modifications thereto have focused -- appropriately -- on scheduling issues, the June 2 proposal is a striking and improper departure from the subject matter of the original litigation! The underlying case was filed by NRDC to address EPA’s promulgation of a source category list under § 112(c) of the Clean Air Act. The proposed agreement, however, would break new ground by requiring an EPA analysis of potential emission reduction strategies for four substances: SO₂, NO₂, mercury and CO₂.⁹ The first three of these substances are not even listed **HAPs** under § 112(b) of the Act; hence EPA has no grounds under § 112 to undertake any action regarding these substances. As noted above, CO₂ not only is not subject to § 112, it is **not even a regulated pollutant under the Act**. While the fact the mining industry will challenge this activity judicially is not a subject for today’s inquiry, it is indicative of the seriousness with which this matter is

⁹As an aside, it is interesting to note that under the terms of the settlement agreement EPA already was obligated to undertake certain actions on May 1 and May 15, 1998, yet the agency did not publish the § 113 notice in the *Federal Register* until June 2. This is despite the fact that EPA and NRDC lodged the proposed agreement with the DC Circuit on April 16. In essence, EPA failed to even begin soliciting public comment on the proposed agreement until more than one month after it was compelled to begin implementing it and six weeks after a bargain was struck with the NRDC. This suggests EPA has no desire in obtaining input on, much less opposition to the proposed agreement.

viewed and of the harm facing the mining industry and its utility customers if left unchallenged. EPA must not be allowed to bind itself through judicially enforceable obligations that have no basis in the Clean Air Act, and that run counter to the clear and unmistakable position of Congress.

C. EPA Officials Effectively Have Conceded Their Disdain for the Coal Industry and Intent to Implement Climate Change Policies Through the “Back Door”

For several years, senior EPA officials have made subtle and, more recently, bolder and public statements regarding the need to “dial out” the use of coal; e.g., **when asked about** his office’s three major priorities for the coming year, one policy official in the air program remarked, “Coal, coal and coal.,, These officials also continue to stress the preeminence of the linkage between coal-fired utilities and the climate change issue. Finally, both of these themes have been tied, publicly and repeatedly, to the regulatory process and to the enhanced use of Clean Air Act rulemaking authorities. Given the very serious nature of the findings, or at least inferences that can be drawn from these activities, members of this Subcommittee may be interested in future discussions on this subject. Relative to the CO₂ debate, I submit EPA is continuing to make policy decisions in the absence of sound scientific underpinnings, decisions that have National energy policy and security implications. Following is but a small selection of the menu of regulatory programs, events and statements at issue.

At a February **18, 1998** meeting of the EPA’s Clean Air Act Advisory Committee (CAAAC), the Acting Assistant Administrator for Air and Radiation remarked that the “next set of major decisions and rules” would include “greenhouse gas implementation.” This statement was made before a large group, is unequivocal and clearly denotes intent to use regulatory authorities.

Several months later, at an American Bar Association Natural Resources Section meeting, this same official stated EPA had “no plan” to issue CO₂-related regulations and had made a “firm commitment” not to implement absent ratification of the Kyoto Protocol. He went on to add, however, that EPA “probably has” the necessary authority to regulate. Interestingly, in response to a question regarding whether EPA is trying to curtail coal availability and use, he said that coal is “mostly an issue as we move into the climate change arena.” The Acting Assistant Administrator then volunteered that, while the SO₂ program and EPA modeling on the ozone SIP call rule portend more modest switching to natural gas, climate change regulations “could have a real impact on coal use...It is hard to see a real solution for coal. ” While these statements are chilling, at least everyone can agree on what is at stake.

This sentiment regarding EPA's view of the viability of coal is not new. Between 1995 and 1996 EPA's air program developed an integrated Clean Air Act utility strategy, or the so-called "Clean Air Power Initiative" (CAPI). EPA suggested this effort purportedly would ensure consistent, coordinated implementation that balanced economic costs and environmental protection. On its face this idea seemed reasonable given that coal-fired utilities arguably are subject to as many or more air quality rules than other industry sources, and that the existing regulatory paradigm is problematic for both EPA and the companies. Ultimately, the mining and other industries rejected CAPI because there was no *quid pro quo* for the increased, legally binding emission reductions of NO_x, SO₂, particulate matter and possibly mercury, being sought by the agency. (EPA staff also suggested at this early date that CO₂ emissions could be factored into the program.)

What is interesting, however, is what transpired in a series of public and private technical meetings between senior agency officials and mining companies. In a closed door meeting in the Assistant Administrator's office, air program staff compared and contrasted CAPI and the various regulatory programs affecting coal use. One particular overhead is memorable, because it included a statement that EPA's ongoing efforts would significantly impact coal use in favor of natural gas. When industry participants registered their shock and dismay at this slide, a senior policy staffer smilingly remarked simply, "Oops, that wasn't supposed to stay there."

The growing **nexus between** EPA's climate change agenda and the mercury issue also provides food for thought. EPA staff reported recently, also at a CAAAC meeting, that aggressive regulatory programs aimed at reducing utility NO_x and SO₂ emissions would be unlikely to result in significant ancillary reductions in mercury emissions. However, they concluded that a "domestic program" to reduce utility CO₂ emissions could significantly reduce mercury emissions. In fact, EPA staff predicted that a CO₂ stabilization program could almost halve mercury emissions, a conclusion based on the observation that utilities would choose to burn a lot more natural gas to comply with the CO₂ reduction program.

Ironically, to the extent EPA often is chastised by the independent scientific community, Congress and even its sister agencies for promulgating regulations devoid of adequate scientific bases, it is the mercury issue that likely has resulted in more criticism than any other air quality issue in recent years.

In a June 15 mercury article in the Cleveland newspaper, "The Plain Dealer," that hits home for me, EPA's Associate Director for Science/Policy and New Programs Initiatives stated that "The World is moving towards the issue of

whether mercury should be emitted in any amount if you can avoid it...An obvious way is switching fuels. If you switch to gas, your emissions go to near zero.” He went on to add that EPA is “not setting out to bring the coal industry to its knees” on the basis of mercury alone, adding that climate change, ozone, particulate matter, regional haze, mercury and other substances are in play. “If you implement a climate program.. **.you** will in fact reduce mercury emissions and you get a lot of this stuff for free.”

Mr. Chairman and members of the Subcommittee, I already feel like I am on my knees and any day now my American colleagues and I could be rolling over belly up.

It is my sense that there are independent bases for EPA to promulgate necessary and scientifically justified regulatory controls affecting emissions of **SO₂**, particulate matter and NO, (though possibly not mercury). That said, however, it is clear that new rules derived from these programs will cost the utility industry alone \$21.8 billion (**\$1997**) for retrofitting pollution control technologies at existing plants over the next **10-15** years.” As such, I am greatly concerned that these are clear indications of a climate-related agenda inexorably intertwined with these Clean Air Act programs.

D. IMPLEMENTATION WITHOUT RATIFICATION CAN BE PREVENTED THROUGH THE APPROPRIATIONS PROCESS

Finally, Mr. Chairman, we are deeply appreciative of your efforts and those of many other Committees and Subcommittees of the Congress to provide vigorous oversight to illuminate the flaws of the Kyoto Protocol and to examine the current Administration’s efforts to implement that protocol prior to its consideration by the US Senate. At the same time, we remain deeply concerned that despite these oversight activities by the Congress – and I understand that already there have been a dozen hearings held on these issues this year – the Administration is continuing to forge ahead with policies and action to implement the protocol. These activities run the gamut from so-called educational programs, which are intended to frighten the public, to regulatory policies which are intended to cripple many of our basic industries, including my industry.

So, if the Administration is not willing to heed advice and warnings from the Congress in the form of these hearings and in strongly worded letters, then it seems to me that Congress needs to avail itself of stronger authority. Mr. Chairman let me come right to the point. Congress needs to legislate on this issue. Congress needs to provide clear, unambiguous statutory direction that no actions to implement the Kyoto Protocol may be taken prior to its

¹⁰ “Environmental initiatives, Consumer Costs,’ Resource Data International, Inc., (1998) page 2

ratification. Probably the best way to accomplish this, and certainly the most expeditious way given how little time is left in this legislative year, is through the appropriations process. Congress needs to restrict funding for implementation activities. If the Administration won't heed your advice or warning, then the best way to get them to comply is to deny them the resources.

Let me be clear. I am not suggesting that Congress attempt to cut off or limit funding for legitimate scientific research, or for research and development of new, more efficient technologies. But I do believe that Congress must act to stop this headlong rush to implement a Treaty commitment that not only has not been ratified, it has not even been sent to the Senate for consideration.

Mr. Chairman, thank you for the opportunity to be here today and I would be pleased to answer any questions that you might have.